

1 Honig already said you view as late offered without
2 cover or a motion or anything.

3 MR. HONIG: I have three objections to four.

4 JUDGE LUTON: Then I think we ought to wait
5 until after lunch, Mr. Honig. Three objections to
6 four.

7 MR. HONIG: They're quick.

8 JUDGE LUTON: Are they quick?

9 MR. HONIG: One I've made and you've denied.

10 JUDGE LUTON: Let's try it.

11 MR. HONIG: That was that it is --

12 JUDGE LUTON: This is the fourth or the fifth
13 representation.

14 MR. HONIG: That's right, this is the fifth
15 representation. The second was that it is late without
16 motion. And third may be reformable.

17 JUDGE LUTON: May be what?

18 MR. HONIG: May be reformable, susceptible to
19 being reformed and that is that it's impossible to make
20 out the distance, the precise distances, they're not
21 stated, between the residences and the contours.

22 JUDGE LUTON: First, let's get a statement
23 from, an offer really, from Mr. Winston, so that the
24 record will reflect his position about the matter that
25 the exhibit is to address.

1 MR. WINSTON: Okay, Your Honor, to respond to
2 exhibit number 4, I would direct your attention to
3 exhibit number 2. And there you will see, in Paragraph
4 Three, beginning on Page One and going on to Page Two,
5 Ms. Holt provides testimony concerning her residence
6 locations.

7 She states that, on line four or the second
8 page of exhibit number 2, a map showing the location of
9 my residence is within the respected signal contours of
10 the proposed station, will be attached hereto at the
11 time this exhibit is offered at the hearing.

12 So that parties were put on notice that
13 exhibit providing the map would be provided at that
14 time, at this time. If you look at Attachment 1 of
15 exhibit number 2, at Paragraph Two, it states, I
16 recently made arrangements with Northeast Florida's
17 engineering consultant to prepare a map that plots the
18 location of my residence with respect to the projected
19 contours proposed by Northeast Florida.

20 I've been informed by Mr. Gurley's wife, Jean
21 Gurley, that her husband suffers from a medical
22 condition that was exacerbated by the recent heat wave
23 in the Washington, D.C. area. As a result, Mr. Gurley
24 has not been able to complete his work on the map.

25 So that the factual underpinning of why the

1 exhibit was exchanged late has been set forth with the
2 original exchange.

3 Secondarily, the map was agreed to
4 essentially as a stipulation among counsel at the
5 deposition. It was -- there was great difficulty in
6 trying to determine where the residences were of not
7 only Northeast Florida's principal, but principals of
8 other applicants as well. It was essentially
9 stipulated among counsel that we would each take
10 responsibility for preparing such a map.

11 The map was intended primarily as an
12 accommodation. So that I'm surprised that your motion
13 to strike, since it was offered in the nature of a
14 stipulation to ease the ability of the parties to
15 determine exactly where residents were located. It was
16 not in any sense, an attempt to upgrade our comparative
17 case, but only to make the trying of the case simpler
18 and easier to resolve without having to go through
19 people trying to guess where residences were located.

20 So I would -- and obviously, Ms. Holt is here
21 and prepared and able to offer exhibit number 4, she
22 knows where the residences are. She's been provided
23 the contours by the engineer. So there is a witness
24 available to make the necessary offer of the exhibit.
25 So I don't see, once again here, an appropriate

1 objection to the offer of exhibit number 4 at this
2 time.

3 JUDGE LUTON: All right. Mr. Honig?

4 MR. HONIG: Well, counsel is correct that
5 this matter did arise at Ms. Holt's deposition. But it
6 was not simply as an accommodation. On Page 59 of the
7 transcript of that deposition, Mr. Winston acknowledged
8 that the integration statement was incorrect in stating
9 that the residence has not always been within the 3.16
10 contour, referring to line 16 through 18.

11 Consequently, it was necessary to produce a
12 map because there had been a significant error which
13 was pointed out during the deposition. Between June
14 and now has been nearly two months. This is not a
15 complicated exhibit and most engineers in Washington
16 could have -- there were other engineers who could have
17 prepared this exhibit. It shouldn't have taken more
18 than 15 minutes.

19 I'm aware of Mr. Gurley's condition and
20 sympathetic to it, but the applicant knew when it had
21 to have its direct case and should have taken whatever
22 necessary steps to get it done on time or if it
23 couldn't get done on time, file a motion for extension
24 of time.

25 JUDGE LUTON: Anything in here come as a

1 surprise to you, this exhibit, which in your view could
2 have been prepared in 15 minutes?

3 MR. HONIG: Yes, the locations of some of the
4 residences inside the 60 is a surprise. Frankly, until
5 I saw it, I wasn't sure which, if any, residences were
6 within or without.

7 JUDGE LUTON: When did you first see the
8 exhibit?

9 MR. HONIG: What's today, Wednesday?

10 JUDGE LUTON: Some days ago, when I first saw
11 it?

12 MR. WINSTON: Yesterday morning. If I
13 recall, a copy was faxed to everybody on Friday and --
14 faxed on Monday.

15 MR. HALAGAO: We received it yesterday.

16 MR. WINSTON: You received the original copy
17 in front of your yesterday. Were not faxed copies sent
18 to you?

19 MR. HONIG: I didn't get a fax.

20 MR. WINSTON: August 19 is a Monday. I
21 believe --

22 MR. HONIG: I was gone. The first I knew was
23 yesterday morning.

24 JUDGE LUTON: Are you surprised by these
25 revelations too, Mr. Halagao?

1 MR. HALAGAO: Well, Your Honor, yes.

2 JUDGE LUTON: Sure, everybody's surprised.

3 What I'm going to do is not reject this on the basis of
4 lateness, but I give the parties who claim they are
5 surprised time to see what they want to do about it.

6 If there are other objections that might
7 support a striking, I'll hear them. But not lateness.

8 MR. HONIG: Could I move not for striking,
9 but in the alternative, for reformation. That is, that
10 we could be directed to agree on a stipulation as to
11 what the precise distances were between the addresses
12 and the 60 DBU contour?

13 JUDGE LUTON: You mean a direction to
14 stipulation? I don't know what that means. The
15 parties want to attempt a stipulation on their own
16 they're free to do so.

17 MR. HONIG: In that case, could a direction
18 be made that Northeast must supplement this exhibit
19 with those distances, especially if they're
20 inconsistencies, and we'll know what the facts are.

21 JUDGE LUTON: I'm not trying this case. It's
22 up to Northeast if it wants to accept your suggestion
23 or not. You don't even have to say so on the record.
24 We'll --

25 MR. WINSTON: Thank you, Your Honor.

1 JUDGE LUTON: All right. Four is not
2 received yet. We'll take a look at it again after
3 everybody's had an opportunity to get over the claim of
4 surprise.

5 We'll recess now and come back at 1:30.

6 (Whereupon, at 12:35 p.m., there was a
7 luncheon recess, the hearing to be recommenced at 1:30
8 p.m. the same day.)
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AFTERNOON SESSION

(Time Noted: 1:30 p.m.)

JUDGE LUTON: On the record. You were talking stipulations or attempted stipulations. Anything worked out in that regard?

MR. WINSTON: Yes, Your Honor. It was agreed and Mr. Halagao was not here and I have not had a chance to talk with the Whites either, but between Mr. Honig and I, what was agreed was that Northeast Florida will supplement exhibit 4 with a statement from Mr. Gurley as to the distances of the various residences to the 60 DBU contour.

JUDGE LUTON: All right.

MR. HONIG: And based on the stipulation, we would not object to four, although we don't want to withdraw our denied objections to the other matters.

JUDGE LUTON: You mean the -- I've made no judgment about the matter. But what you've characterized as the conflicts --

MR. HONIG: I want to preserve the objection to the other matters, but I don't object to four coming in with that stipulation to show the exact distances.

JUDGE LUTON: All right. That's fine. Then I think I should wait until four is supplemented before I receive it. So then we'll have cross examination on

1 one, two and three only, then. Is that going to be
2 satisfactory?

3 MR. HONIG: It might be helpful to us to use
4 four as a document which has been identified.

5 JUDGE LUTON: Well, you can certainly do
6 that. You can already do that. It's been identified
7 and it would be proper under the circumstances to use
8 it, to refer to it, talk about it for purpose of
9 examination. And then once is received and it's
10 supplemented form, it will be a piece of evidence like
11 everything else. All right?

12 Is there any more by way of direct case from
13 Northeast Florida?

14 MR. WINSTON: No, Your Honor.

15 JUDGE LUTON: All right, then. Cross
16 examine. Who'll take the lead? Mr. Honig?

17 MR. HONIG: Was it your intention to reserve
18 until after the case on this matter of Radio Mableton
19 and the admissibility of --

20 JUDGE LUTON: Yes, it was. I'll need to -- I
21 want to give that one more careful thought than I can
22 sitting in a hearing.

23 MR. HONIG: Do you require us to submit a
24 brief?

25 JUDGE LUTON: I don't think so. The issue is

1 pretty clear from discussions this morning. It's clear
2 in my mind. I'm prepared to make whatever mistake I
3 should make here.

4 MR. HONIG: You'll get half of us to agree
5 with you.

6 JUDGE LUTON: I know.
7 Whereupon,

8 LILLIAN HOLT
9 the witness on the stand at the time of the recess,
10 resumed the stand and, having previously been duly
11 sworn, was examined and testified further as follows:

12 CROSS EXAMINATION

13 BY MR. HONIG:

14 Q Ms. Holt, good afternoon. I'm David Honig
15 with Peaches Broadcasting Limited.

16 Since it is fresh in your mind, let me begin
17 with this question of residence. First, and I'm
18 referring to your direct case exhibit number 2, your
19 testimony is that between February '85 and February
20 1990 you resided at 7235 Charboth Drive South.

21 Now, during that entire time, was that, in
22 fact, the only home you had?

23 A No.

24 Q Now, would you explain what other homes you
25 had during that time and when you had them?

1 A Prior to February 1989, I'm sorry, December -
2 - no -- February 1989, I lived at 3567 College Street.

3

4 MR. WINSTON: I'm sorry, I didn't hear the
5 witness' answer, Your Honor.

6 THE WITNESS: Prior to February 1989, I lived
7 at 2567 College Street.

8 BY MR. HONIG:

9 Q That is between February 1985 and February
10 '89 you lived on College Street? Then, in February
11 '89, is it your testimony that you moved to Charboth
12 Drive?

13 A Yes.

14 Q Then, in -- and you resided at Charboth Drive
15 until when?

16 A February 1990.

17 Q For one year? Okay. Then from February 1990
18 until September 1990, did you live at Bramble Road?

19 A Yes.

20 Q And then from September 1990 to now, you
21 lived again on College Street? Is that correct?

22 A October 1990.

23 Q October 1990. Now, if you'll give me one
24 moment, the statement in your -- in exhibit number 2,
25 that between February '85 and February 1990 and I'm

1 referring to the first page, I resided at 6235 Charboth
2 Drive South.

3 A Could you repeat that?

4 Q Do you have the exhibits before you?

5 A Which exhibit is that?

6 Q Exhibit 2, Page One.

7 A Okay.

8 Q I'm referring to the last full sentence at
9 the end of that page. That sentence states -- you see
10 where it is? -- it starts with the words between
11 February 1985?

12 A Yes.

13 Q Now, in fact, for four of those five years,
14 you actually resided on College Street, isn't that
15 correct?

16 A I don't know the exact number.

17 Q From '85 to '89. My question is, isn't a
18 fact that College Street is located and I'll ask you to
19 look at your exhibit 4 which is your map, outside the
20 60 DBU contour?

21 A College Street is -- according to that map,
22 yes.

23 Q It is, in fact, located outside the contour?

24 A According to that map, yes.

25 Q Do you believe the map to be correct?

1 A I'm not an engineer, but I believe what's he
2 done is correct.

3 Q Okay. Now, Charboth Drive was inside the
4 contour. Now, were you aware that -- and I don't
5 expect you to be a geographical expert -- but when you
6 were living at these two addresses, that in fact --

7 MR. WINSTON: Which addresses?

8 MR. HONIG: Charboth Drive and College
9 Street.

10 BY MR. HONIG:

11 Q In fact, College Street was farther away from
12 Baldwin than was Charboth Drive?

13 A Could you repeat that?

14 Q I'm asking you whether you were aware at this
15 time that Charboth Drive -- I'm sorry -- that College
16 Street was farther away from Baldwin than Charboth
17 Drive?

18 A Yes.

19 Q Now, is that why you failed in your direct
20 case to identify yourself as a resident of College
21 Street for four of those first five years of your
22 residence?

23 A Could you repeat that?

24 Q Do you understand the question?

25 A Could you repeat the question?

1 Q Well, I'll ask it another way. Why did you
2 represent that you lived on College Street only since
3 September 1990, when in fact you've lived there most of
4 the time you've been in Jacksonville?

5 A I don't understand your question.

6 Q Let me ask it again. Why did you say in your
7 exhibit number 2 that you had only lived on College
8 Street one year, when in fact, you've lived there
9 nearly five years?

10 A I don't think it says that, according to this
11 document that I have in front of me.

12 Q You signed exhibit number 2, didn't you?

13 A Yes.

14 Q You read it before you signed it?

15 A Yes.

16 Q Now, does it not say that you only resided on
17 College Street since September 1990?

18 A No.

19 Q Let me direct you to the first full sentence
20 on the top of Page Two. Does that clarify this in your
21 mind?

22 A I'm reading. Yes.

23 Q That says I now reside at 2567 College
24 Street. And the last date given was until September
25 1990 --

1 A That's not what that says.

2 Q Would you explain what you meant.

3 A This says I now reside at 2567 College Street
4 in Jacksonville, Florida.

5 Q Is your testimony that one could read that
6 and believe that you lived there for five years?

7 A No.

8 Q Then why didn't you say between February 1985
9 and February 1989, I lived at College Street, if that
10 was true? Why did you tell us you lived on Charboth
11 Drive?

12 A Because I did.

13 Q You just testified that you lived on College
14 Street, not on Charboth Drive. You lived on Charboth
15 Drive for just one year, not four.

16 A So? That's what it says. I don't understand
17 what you're saying. I'm not understanding this.
18 Because it says between February 1985 and February
19 1990, I resided at 7235 Charboth Drive.

20 Q Now, I don't want the reporter to read it
21 back, let me just ask if counsel recalls this. In
22 response to the first question I asked you, didn't you
23 testify that from February '85 to February '89, you
24 lived at College Street, then from February '89, you
25 moved to Charboth Drive? Wasn't that your testimony?

1 A No. Not that I recall.

2 Q What do you recall your testimony being?

3 A Between February 1985 and February 1990, I
4 resided at 7235 Charboth Drive. Between, that's what I
5 remember.

6 Q Now, didn't I ask you whether you had any
7 other addresses during that time, where you lived, any
8 other homes?

9 A Yes, you did.

10 Q And you said, yes, and I asked you where were
11 they and you said between February '85 and February
12 '89, you lived on College Street and you moved to
13 Charboth Drive?

14 A Right.

15 Q I'm asking you why didn't you say that in
16 your direct case if that is in fact where you lived?

17 A I answered your question.

18 MR. HONIG: Your Honor, the witness is not
19 being responsive. I don't know how --

20 MR. WINSTON: Maybe there's some confusion in
21 the record.

22 MR. HONIG: There's no confusion. The
23 witness said that she lived at an address that was
24 inside the service area for these four years, February
25 '85 to February 1990, including when the application

1 was filed.

2 She's now taken the stand and this isn't a
3 matter which one can be confused to where she lives and
4 said for four of those five years, she lived outside
5 the service area.

6 Now she's saying she didn't say that. It's
7 not confusing at all. I'm asking why there are these
8 inconsistent representations and Your Honor, I'm going
9 to have to beg your assistance. I can't get an answer
10 from this witness. And it's a matter that's critical,
11 because the two residences are opposite sides of the
12 line.

13 JUDGE LUTON: Well, you can continue to try
14 to get an answer, if you don't feel you've got one
15 already.

16 MR. HONIG: I don't. Well, let me try it
17 this way. Can we go off the record.

18 JUDGE LUTON: Off the record.

19 (Discussion off the record.)

20 JUDGE LUTON: On the record.

21 BY MR. HONIG:

22 Q Ms. Holt, your application reflects an
23 address of Charboth Drive, isn't that right?

24 A Yes.

25 Q Now, the application was filed in December

1 1989. Now, on the day your application was filed, do
2 you remember sending the application off to Washington?

3 A Yes.

4 Q You sent it by Federal Express, isn't that
5 right?

6 A I don't recall exactly.

7 Q It would have been an event that would have
8 stuck in your mind. It was an important event in your
9 life.

10 A Yes.

11 Q Now, which home did you retire into that
12 night?

13 A 7235 Charboth Drive.

14 Q But that wasn't your residence, was it?

15 A My residence on December 14, 1989 was 7235
16 Charboth Drive.

17 Q Then why did you testify that you lived from
18 1985 to 1989 on College Street?

19 A I don't recall testifying that I lived from
20 1985 to February 1990 on College Street. I don't
21 recall testifying.

22 Q Other than between September 1990 and the
23 present, have you ever lived on College Street?

24 A Sure.

25 Q When was that?

1 A February 1985 to February 1989.

2 Q Now do you recall -- your memory is refreshed
3 then. You did testify that that was where you lived?

4 A During that period, yes.

5 Q Okay. Then doesn't College Street appear in
6 your application?

7 A It does.

8 Q It does?

9 MR. WINSTON: In your application?

10 THE WITNESS: It shouldn't appear in my
11 application, because I did not live there when I --
12 during that process, the application process. It was
13 not until after, in 1990, that I moved back into
14 College Street.

15 BY MR. HONIG:

16 Q Do you understand why I'm confused?

17 A No, I don't. I think you're trying to
18 confuse me.

19 Q No. There are two residences. I don't know
20 where you live, you do. You just testified that from
21 '85 to '89, you lived on College Street, didn't you?

22 A From February 1985 until February 1989, I
23 lived at College Street, the first time. I then moved
24 to 7235 Charboth Drive. After that I lived at 3716
25 Bramble Road and in October 1990, I moved back into my

1 residence at 2567 College Street.

2 Q I'm sorry. Forgive me. I got the date
3 wrong. So you, at that time, were on Charboth Street?

4

5 Now, on exhibit B of your application there
6 is an integration statement. That statement --

7 A Could you repeat that exhibit?

8 Q B, of your application. It's not before you.

9 A Oh, I don't have that.

10 Q There is a sentence, though, that's been read
11 while you were on the stand this morning.

12 Ms. Holt has resided within Jacksonville,
13 Florida since February '85 and will claim service area
14 local residence credit.

15 What did you mean by service area?

16 MR. WINSTON: Objection, Your Honor. I'd
17 like to have the witness have that in front of her when
18 he asked questions about a document.

19 MR. HONIG: That's fair.

20 MR. WINSTON: I have a second objection, Your
21 Honor. I think it calls for legal conclusion from the
22 witness. I think service area has specific legal
23 meaning before the Commission.

24 MR. HONIG: I agree with counsel, it does.
25 And that's why I'm asking the witness to say in her own

1 words what she meant.

2 JUDGE LUTON: Overruled.

3 BY MR. HONIG:

4 Q What did you mean by this statement, service
5 area local residence credit?

6 A My understanding was the area of broadcast
7 for the radio station out of Baldwin.

8 Q Now, specifically, when you filed this
9 application, did you have before you, among other
10 things, when you signed the application, the map a copy
11 of which revised is now Northeast Florida Exhibit 4?

12 A When I signed the application?

13 MR. WINSTON: I object. Obviously, everybody
14 knows that exhibit four was just created. She couldn't
15 have had --

16 MR. HONIG: No, a copy of which was revised
17 to -- you're right, I'm sorry.

18 BY MR. HONIG:

19 Q The map, which is in fact Exhibit 5A in your
20 application?

21 A I had that as a part of my application
22 package.

23 Q You did?

24 A Yes.

25 Q Now, did you intend by your answer, did you

1 intend by the statement, service area local residence
2 credit to mean the area within one or both of the
3 concentric circles on exhibit 5A?

4 A I meant by my answer to be the broadcast area
5 of the radio station, the listening area. That was my
6 understanding.

7 Q And by listening area, was it your
8 understanding that that encompassed just the areas
9 within these circles or is it some smaller area or is
10 it some larger area?

11 A Jacksonville and Baldwin area.

12 Q So, is it your testimony that service area
13 local residence credit when you filed the application,
14 meant to you something different than the concentric
15 circles?

16 A I think there's some similarities to it.

17 Q But your intention was not that they are
18 identical?

19 MR. WINSTON: Objection, Your Honor. I think
20 that the intent of the application was is what's
21 relevant and the application, she had assistance in
22 preparing the application.

23 BY MR. HONIG:

24 Q Was there doubt in your mind as to what
25 service area local residence was?

1 A Not in my mind.

2 Q Did you ask your engineer?

3 A No, I didn't.

4 Q I don't want to know the advice if he gave
5 you advice, but did you ask your lawyer what that
6 meant?

7 A Local residence? Yes.

8 Q Service area local residence credit?

9 A Local residence. I asked him local
10 residence.

11 Q Did you ask what service area local residence
12 credit meant?

13 A No.

14 Q Okay. Did you write the integration
15 statement yourself? Are these your words? The
16 integration statement in the application, I'm sorry.
17 Did you write this yourself? Are these your words?

18 A I had assistance from Mr. Winston.

19 Q That particular paragraph, were those your
20 words?

21 A Primarily.

22 Q It's one sentence.

23 A You said paragraph?

24 Q That paragraph, that one sentence paragraph
25 that we're --

1 A That's not a paragraph, that's a sentence. I
2 don't know what you're talking about.

3 Q The sentence that begins, Ms. Holt has
4 resided within Jacksonville, Florida and so forth?

5 A Yes.

6 Q That's your words?

7 A Yes.

8 Q Okay. Now, I'd like to then turn you to the
9 integration and diversification statement that you
10 filed a few months ago. It was actually filed May
11 10th, 1990, and it might help if -- I don't mind if
12 counsel places it before you.

13 Now, would you turn to Page Two of that
14 statement and focus for one moment on Paragraph Six.
15 Look at the first sentence of Paragraph Six which
16 states you have resided in Jacksonville within the 3.16
17 millivolt per meter contour of the proposed facility
18 since February 1985 and will claim credit for local
19 residence.

20 Are those your words?

21 A No.

22 Q Now, you signed this statement, did you not?

23 A Yes.

24 Q And there is another signature there. Now --
25 and then it's dated by hand. That date where it's

1 stated, it that your writing?

2 A Yes.

3 Q Okay. Was the other signature there at the
4 time you signed your name?

5 A I don't recall.

6 Q You don't recall. Did you have an
7 understanding when you signed this statement what the
8 3.16 millivolt per meter contour was?

9 A No.

10 Q Did you ask anyone before you signed this
11 statement what that representation meant?

12 A No.

13 Q Would you explain why you signed the
14 statement, although you didn't know what that meant?

15 A Could you say that again?

16 Q If you didn't know what it meant, would you
17 explain why you signed it?

18 A Because I assumed that it was correct.

19 Q And the basis for your assumption was what?

20 A That it was correct.

21 Q No, the basis for your assumption was -- what
22 were you relying on in believing it to be correct?

23 A That the information that I did not provide
24 was provided by other experts and was correct.

25 Q Okay. Who was it that supplied this